



City of Chicago  
Mayor Richard M. Daley, Mayor

Department of Law

James S. Georges  
Solicitation Counsel

City Hall, Room 600  
North LaSalle Street  
Chicago, Illinois 60602  
(744-0200)

(744-8538 (FAX))  
(744-2963 (TTY))

<http://www.cityofchicago.org>

April 12, 2007

The Honorable Edward M. Burke  
Chairman, Committee on Finance  
City of Chicago  
City Hall, Room 302  
121 North LaSalle Street  
Chicago, Illinois 60602

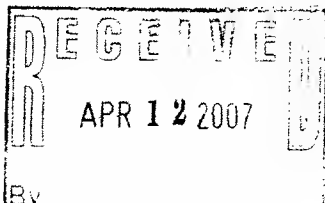
Dear Chairman Burke:

Please accept this correspondence as a response to your letter, dated February 23, 2007, regarding the agreement (the "Agreement") between the City of Chicago (the "City") and Redflex Traffic Systems, Inc. ("Redflex"), for Digital Automated Red Light Enforcement Program Services ("DARLEP Services").

As an initial matter, I respectfully disagree with your contention that the Agreement and the three amendments to the Agreement "contravene open and competitive procurement required by law." The Department of Law approved the Agreement as to form and legality at the time of its execution. Our approval was based, in part, on our concurrence with the determination of the Chief Procurement Officer (the "CPO") that the procurement of the DARLEP Services was not adapted to competitive bidding.

Section 3 of the Municipal Purchasing Act for Cities of 500,000 or More Population (the "Act") contains the general requirement that contracts in excess of \$10,000 be procured through free and open competitive bidding after advertisement. 65 ILCS 5/8-10-3 (See Section 2-92-642 of the Municipal Code of Chicago, which increases that threshold dollar amount to \$100,000). Section 4 of the Act ("Section 4") exempts from the competitive bidding requirements of the Act various types of contracts, including "[c]ontracts which by their nature are not adapted to award by competitive bidding, such as but not limited to contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part[.]" 65 ILCS 5/8-10-4.

The Agreement falls within the scope of Section 4 because it requires the "services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part."



For example, in *Hassett Storage Warehouse v. Board of Elec.*, 387 N.E.2d 785 (Ill. App. 1 Dist. 1979), the court reviewed a City of Chicago Board of Election Commissioners (the "Board") procurement for the storage, delivery and collection of 1,300 voting machines. Plaintiff, an aggrieved bidder, alleged that the Board violated the competitive bidding requirements of the Act. The court initially noted that "the competitive bidding statute, as a restriction upon public bodies' powers, is to be narrowly construed." *Hassett* at 792. The court then determined that the nature of the contract "requires that trust and confidence be placed in the performer of the contract and requires near perfect performance under extreme time pressures." *Id.* As a result, the court found that the contract was for services in which "the ability or fitness of the individual plays an important part" and therefore was not adapted to competitive bidding. *Id.*

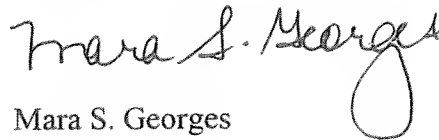
The DARLEP Services, similar to the services described in *Hassett*, require trust and confidence to be placed in the contractor and near perfect performance. Specifically, the City must have trust and confidence in the DARLEP Services contractor because the City red-light violation citations that are issued based upon the contractor's services are issued in the name of the City and must be defended by the City. In addition, the contractor's failure to have near perfect performance could result in the erroneous issuance of red-light violation citations or the failure to issue those citations when there was a violation. Similar to the contractor in *Hassett*, the DARLEP Services contractor is operating under extreme time pressures where a delay in its performance by only a few seconds could result in a red-light violation citation not being issued to an individual that should have received one. Therefore, by analogy to *Hassett*, the Agreement is exempt from the competitive bidding requirements of the Act.

Since the DARLEP Services are exempt from the competitive bidding requirements of the Act, the CPO has the authority to procure the DARLEP Services through a process other than competitive bidding (e.g., a request for proposals (which is a competitive procurement, but not a competitive bid) or a non-competitive procurement process such as a "sole source").

Furthermore, Section 4 does not limit the CPO to using the same procurement process (e.g., a request for proposals) each time the CPO procures additional services that are not adapted to competitive bidding. As a result, even though the CPO used a request for proposals to procure the initial DARLEP Services, the CPO was free to use, and did use, a non-competitive procurement process for the additional DARLEP Services described in the three amendments to the Agreement. From a contracting standpoint, once the CPO determined that Redflex should be awarded those additional DARLEP Services pursuant to a non-competitive procurement, it was more efficient (and functionally equivalent) to include the additional DARLEP Services in amendments to the Agreement, as opposed to a series of new contracts with Redflex.

Thus, in conclusion, it is my legal opinion that the Agreement and its amendments are lawful. Please do not hesitate to contact me should you wish to discuss this, or any other, matter.

Respectfully,

  
Mara S. Georges

cc: Barbara Lumpkin  
Paul Volpe